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IN THE

Supreme Court of the United States

October Term, A. D. 1957

STATES OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA,
Complainants,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,
Defendants.

STATE OF MICHIGAN,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, *et al.*,
Defendants.

STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI and ARKANSAS,
Intervening Defendants.

No. 4, Orig.

STATE OF NEW YORK,
Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, *et al.*,
Defendants.

MOTION OF THE STATE OF NEW YORK, COMPLAINANT, FOR MODIFICATION OF THE DECREE OF APRIL 21, 1930, SO AS TO REQUIRE THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO (FORMERLY THE SANITARY DISTRICT OF CHICAGO), DEFENDANT, TO RETURN TO LAKE MICHIGAN THE WATER TAKEN THEREFROM AS DOMESTIC PUMPAGE, OR, IN THE ALTERNATIVE, FOR APPOINTMENT OF AND REFERENCE TO A SPECIAL MASTER.

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
By: JOHN R. DAVISON,
Solicitor General of the State of New York.

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The State of New York, complainant, by Louis J. Lefkowitz, its Attorney General, presents this motion for modification of the decree of April 21, 1930, so as to require the Metropolitan Sanitary District of Greater Chicago (formerly the Sanitary District of Chicago), defendant, to return to Lake Michigan the water taken therefrom as domestic pumpage, or, in the alternative, for the appointment of a Special Master and reference to him for hearing and report of the issues raised by this motion.

The decree of this Court of April 21, 1930 in the above entitled actions provides, so far as is here pertinent, as follows (281 U. S. 696, 697, 698):

> "3. That on and after December 31, 1938, unless good cause be shown to the contrary, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of the annual average of 1,500 cubic feet per second in addition to domestic pumpage.
>
> "4. That the provisions of this decree as to the diverting of the waters of the Great Lakes-St. Lawrence system or watershed relate to the flow diverted by the defendants exclusive of the water drawn by the City of Chicago for domestic water supply purposes and entering the Chicago River and its branches or the Calumet River or the Chicago Drainage Canal as sewage. The amount so diverted is to be determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water mains and as so computed will include the run-off of the Chicago and Calumet drainage area."

* * *

"7. That any of the parties hereto, complainants or defendants, may, * * * apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy."

In addition to the affirmative relief mentioned above, modification of the decree is here sought to the extent of striking therefrom the words "in addition to domestic pumpage" in paragraph number 3 and all of paragraph number 4.

The grounds of this motion are:

1. The original complaints in these actions did not demand that the water taken from Lake Michigan as domestic pumpage be returned to the Lake. This Court, therefore, rejected the demands which complainants made upon the argument for such return. The Court said (281 U. S. 179, 200):

"Perhaps the complainants would not be very insistent with regard to the 1,000 or 1,500 c. f. s. which earlier in this case they seemed to admit to be reasonable, if their demand were allowed that the domestic pumpage be purified and returned to the Lake—a demand not contemplated by their bill. But purification is not absolute. How nearly perfect it will be with the colossal works that the defendants have started is somewhat a matter of speculation. The master estimates that with efficient operation the proposed treatment should reach an average of 85 per cent purification and probably will be 90 per cent or more. Even so we are somewhat surprised that the complainants should desire the effluent returned. The withdrawal of water for domestic purposes is not assailed by the complainants and we are of opinion that the course recommended by the master is more reasonable than the opposite demand. If the amount

withdrawn should be excessive, it will be open to complaint. Whether the right for domestic use extends to great industrial plants within the District has not been argued but may be open to consideration at some future time."

2. On the hearing before the Special Master (Honorable Charles E. Hughes), the "suggestion" that the water taken from Lake Michigan as domestic pumpage be returned to the Lake was made only "in a general way", and the Special Master said that the evidence was "by no means convincing that it would be a reasonable requirement" (Report of Special Master, Appendix A p. 82).

3. At the time the Special Master made his report, the population was estimated at 3,500,000, with an additional population equivalent of industrial waste of 1,500,000. It was also then estimated that in 1945 the total of human population and population equivalent of industrial waste would be 6,800,000 (Report of Special Master, Appendix A p. 81).

4. The Special Master found that 100% purification of the sewage taken to the treatment works was not practicable at that time, and that the expected degree of purification would be between 85% and 90% (Report of Special Master, Appendix A p. 81).

5. The Special Master also found that it was not clear whether the return of domestic pumpage to the Lake would be "compatible with the interests of navigation in the Chicago harbor" at that time (Report of Special Master, Appendix A p. 82).

6. The Special Master also found that it was not clear at that time whether "there would be a serious danger of contaminating the water supply and creating offensive con-

ditions at the bathing beaches of the city" (Report of Special Master, Appendix A p. 82).

7. The Special Master also found that there remained a problem with respect to the storm flow (Report of Special Master, Appendix A p. 82).

8. The Special Master concluded that provision should be made for further examination "after the sewage treatment plants have been completed, and the effect of the effluent therefrom with the storm water flow on the navigable channels has been observed, to the end that the question of any further or other relief may have appropriate consideration in the light of actual conditions".

9. The amount of water now being withdrawn from the Lake for domestic and industrial purposes is excessive in that there is being withdrawn for such purposes as domestic pumpage, which is not returned, an amount required to serve a human population of over 4,600,000, and an additional population equivalent of industrial waste of over 3,800,000, a total of over 8,400,000, which total is expected to increase within the next 20 years to 15,000,000 to 20,000,000.

10. The present and ever-increasing withdrawal of water from the Lake as domestic pumpage invades and increasingly will invade complainant's rights by lowering the water levels of the Great Lakes upon which it borders, and by decreasing the volume of outflow from the Great Lakes through the Niagara and St. Lawrence Rivers.

11. This deprivation of complainant's rights is not only prejudicial and detrimental to complainant but also to the other States which border the Great Lakes, the United States and Canada and their respective people, the Power Authority of the State of New York which is

directed by licenses of the Federal Power Commission to develop hydroelectric power from the waters of the Niagara and St. Lawrence Rivers, the investors in the bonds of that Authority, the future consumers of the electrical power which it will generate, and all who make use of these natural resources for purposes of navigation, commerce, recreation and power development.

12. It is now practicable to have a greater percentage of purification than is presently being accorded.

13. Return of domestic pumpage to the Lake would be in the interest of navigation.

14. Return of domestic pumpage to the Lake would not contaminate the water supply or create any offensive condition.

15. The problem with respect to storm flow can be solved.

16. Experience has shown that it is not only right but reasonable to require the domestic pumpage to be returned to the Lake.

17. The right to divert water from the Lake for domestic use does not extend to great industrial plants.

18. Complainant should be afforded an opportunity to present evidence, if evidence is necessary, to show that the present withdrawal of water from Lake Michigan as domestic pumpage by defendant, State of Illinois, and the expected increase in such withdrawal illegally and unnecessarily lowers and will continue so to lower the natural level and flow of the waters of the Great Lakes-St. Lawrence system and that this deprives and will continue to deprive complainant, its agencies, subdivisions and people of their rights in these natural resources, and causes them to suffer substantial financial losses.

WHEREFORE, complainant, State of New York, respectfully moves this Court for an order modifying the decree of April 21, 1930 by striking therefrom the words "in addition to domestic pumpage" in paragraph number 3 and all of paragraph number 4, and requiring the Metropolitan Sanitary District of Greater Chicago to return to Lake Michigan the water taken therefrom as domestic pumpage, or, in the alternative, for the appointment of a Special Master and reference to him for hearing and report of the issues raised by this motion.

Dated: December 14, 1957.

Respectfully submitted,

LOUIS J. LEFKOWITZ,
Attorney General of the State
of New York,

BY: JOHN R. DAVISON,
Solicitor General of the State
of New York.

APPENDIX A.

Excerpts From Report of Special Master on Re-Reference.

The difficulties of prediction inhere in the attempt to estimate results on such a vast and wholly unprecedented scale of sewage treatment as that involved in the disposal of the sewage of a population now estimated at over 3,500,000, with an additional population equivalent of industrial wastes of 1,500,000, and an estimated total of human population and population equivalent of industrial wastes of 6,800,000 in 1945. The experience of very much smaller communities affords little aid in determining the effect of this enormous volume of effluent from the sewage treatment works, and the storm water run-off containing untreated sewage, flowing into the channels of the Drainage Canal and the Chicago River. If the flow at Lockport were entirely stopped, the result would be, as Colonel Townsend, testifying for the complainants, said, "that the only water from the Lake would be that which comes in as the Lake rises and falls." In that case, with the water held at Lockport, there would be "absolutely no slope in the river and its connections." The large sewage treatment works—the West Side and the Southwest Side plants—adjoining the Drainage Canal will pour their effluents into the canal, and if there is no flow at Lockport, these effluents will pass directly into the Chicago River. It is found that one hundred per cent. purification of the sewage taken to the treatment works is not practicable with present knowledge. The expected degree of purification is found to be a minimum of eighty-five per cent. and it is probable that it will be ninety per cent. or more (*supra*, p. 28). This means that an amount not exactly

determinable, which may be less than ten per cent. or possible as high as fifteen per cent., of the sewage will not have been purified and will be represented in the effluent. While the residual organic matter in the effluent may be very different from an equal percentage of the raw sewage as a potential source of nuisance, it is far from demonstrated, in my judgment, that with all flow stopped at Lockport, the concentration of such a vast volume of effluent as will flow from the proposed sewage plants, together with the untreated sewage and wastes carried with the storm flow into the limited channels of the Drainage Canal and Chicago River will not create conditions in these channels seriously detrimental to navigation.

The complainants ask that the decree provide that on and after the date fixed for the completion of the sewage treatment program, that the State of Illinois, the Sanitary District, and all persons acting under the authority of either, be ordered to refrain from so polluting the Chicago River, and the auxiliary navigable channels of the Sanitary District, by the discharge of sewage or otherwise as to create an obstruction to or interference with navigation or navigable capacity. It seems to me that the best way, and the reasonably sure way, of accomplishing this result is to permit an outflow from the Drainage Canal at Lockport. The suggestion that outfall sewers or tunnels might be built to take the effluents directly to Lake Michigan has been made in a general way, but the evidence is by no means convincing that it would be a reasonable requirement to compel the Sanitary District or the city to build such sewers or tunnels to take the effluents from the sewage treatment plants across the city to the Lake (*supra*, p. 134). The problem of the storm flow would still remain and would be especially serious in view of the volume

which may be expected in the run-off of this large area with its great and growing population. The pumping of circulating water into the Drainage Canal and the Chicago and Calumet Rivers would, as pointed out in the testimony (*supra*, p. 135) carry whatever filth there would be in these rivers to the Lake more rapidly. It is not clear that this course would be compatible with the interests of navigation in the Chicago harbor, and that there would be a serious danger of contaminating the water supply and of creating offensive conditions at the bathing beaches of the city is quite evident. As to the water supply, it is urged that water filtration plants should be constructed. The fact remains that the effluents from the sewage treatment plants and the storm water must go somewhere, and if they are taken away from the Lake and discharged through the canal at Lockport, both the danger to the water supply will be removed and conditions suitable to navigation can be maintained.

But if the effluent from the sewage treatment plants and the storm water are to be discharged through the Drainage Canal at Lockport, it is well established that some flow from the Lake will be required. This it appears should not be less than a mean annual diversion of 1,000 c. f. s., in addition to pumpage; and it does not at present appear that it is necessary that the diversion should exceed a mean annual amount of 1,500 c. f. s., in addition to pumpage.

My conclusion is that, so far as the question can be determined at this time, the interests of navigation in the Chicago River as a part of the Port of Chicago, when the above described sewage treatment program has been carried out, will require that the flow of the Drainage Canal be discharged at Lockport, and that for this purpose there will be necessary a diversion of water from Lake Michigan of an annual average of not less than 1,000 c. f. s. and that

it would be safer to allow a mean annual diversion of 1,500 c. f. s., in addition to pumpage. Provision should be made for further examination, after the sewage treatment plants

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have been completed, and the effect of the effluent therefrom with the storm water flow on the navigable channels has been observed, to the end that the question of any further or other relief may have appropriate consideration in the light of actual conditions.

This disposition is believed to be in accord with the equitable principles which appropriately govern the exercise of the jurisdiction to determine controversies between States, a jurisdiction which is unfettered by technicalities and in the last analysis is for the purpose of establishing substantial justice. In the present instance, equitable considerations are those applicable with appropriate regard to the substantial rights of the complainants, as determined by this Court, after the Sanitary District has carried out the above described comprehensive program for sewage treatment. The injury sustained by the complainants is through the lowering of the levels of the Great Lakes in consequence of the diversion, and it is the substance of that injury which demands consideration in formulating the provisions of the decree.

In my former report it was found that it was possible to determine with approximate accuracy the full extent of a particular diversion of water from the Great Lakes; that a diversion did not operate to cause a continuous and never-ending lowering of levels, but that within practical limits, under present conditions, an approximate equilibrium would be reached within a period of time which could be calculated, after which the effect of the diversion would cease to

increase. Accordingly, it was determined that the full effect of a mean annual diversion of 8,500 c. f. s. of water from Lake Michigan at Chicago, through the Drainage Canal of the Sanitary District, was to lower the levels of Lakes Michigan and Huron approximately six inches at mean lake levels; the levels of Lakes Erie and Ontario approximately five inches at mean lake levels; and the levels of the connecting rivers, bays and harbors, so far as they have the same mean levels as the above mentioned lakes, to the same extent respectively. It was also found that if the diversion at Chicago were ended, assuming that other diversions from the Great Lakes remained the same, the mean levels of the lakes and rivers affected by the Chicago diversion would be raised in the course of several years (about five years in the case of Lakes Michigan and Huron and about one year in the case of Lakes Erie and Ontario) to the same extent as they had been lowered, respectively, by that diversion.

On a similar calculation, the entire effect of a mean annual diversion of 1,000 c. f. s. by the Sanitary District would be a lowering of Lakes Michigan and Huron approximately seven-tenths of an inch, and of a mean annual diversion of 1,500 c. f. s., approximately one inch, at mean lake levels.

Assuming that a mean annual diversion of 8,500 c. f. s. would effect a lowering of six inches, a cessation of the diversion of water by the Sanitary District beyond the annual average of 1,500 c. f. s., that is, a cessation of 7,000 c. f. s. of the diversion of the 8,500 c. f. s. at present allowed, would have the effect of raising the levels of Lakes Michigan and Huron to the same extent as they were lowered by that diversion except by the amount of about one inch.

It can hardly be maintained that a diversion not exceeding an annual average of 1,500 c. f. s. would produce such a substantial injury to the complainants, when the fluctuations of lake levels due to other causes than diversions are considered, as to preclude attention to the serious consequences which may result from a

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failure to maintain suitable conditions in the interest of navigation in case all flow at Lockport should be terminated. In my opinion such an extreme requirement, after the Sanitary District has provided for sewage treatment so far as practicable, should await more exact knowledge as to its effect.

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Summary.

My conclusions are:

(1) That the completion of the North Side, West Side, Calumet, and Southwest Side Sewage Treatment Works, above described, with their appurtenances and the necessary intercepting sewers, and the efficient operation of these plants will afford practical measures from the standpoint of present sanitary engineering knowledge for the complete treatment of the dry weather flow of sewage and wastes of all the area comprised within the Sanitary District of Chicago, and also, in times of storm, of approximately 150% of the ordinary dry weather flow of sewage and wastes; that in the actual operation of these plants it may appear that a greater amount of the storm flow can be treated at least in part.

(2) That what is described as "complete treatment" of the sewage taken to the sewage treatment works (that

is, apart from the excess storm flow which remains untreated) does not amount to 100% purification; that with efficient operation the proposed sewage treatment plants should attain not less than an annual average of 85% purification of the sewage treated, and that it is probable that the degree of purification will be 90% or more.

(3) That the remainder of the storm flow, in excess of the volume treated in the sewage treatment plants will pass into the Chicago River and its branches, and into the canals of the Sanitary District, and any storm flow so passed into the river, its branches and the canals, at storm times will contain sewage and wastes which have not been treated by the sewage treatment works.

(4) That the time that should be allowed for the completion of the sewage treatment works above described is as follows:

(a) That the North Side Sewage Treatment Works, with appurtenances, should be completed on or before July 1, 1930;

(b) That the Calumet Sewage Treatment Works, with appurtenances, should be completed on or before December 31, 1933;

(c) That Batteries A and B of the Imhoff tanks of the West Side Sewage Treatment Works should be completed on or before July 1, 1930.

(d) That the West Side Sewage Treatment Works, with appurtenances, should be completed on or before December 31, 1935;

(e) That the Southwest Side Sewage Treatment Works, with appurtenances, should be completed on or before December 31, 1933;

(f) That the necessary intercepting sewers pertaining to the above described sewage treatment works should be completed within the time allowed for the completion of the sewage treatment works, respectively.

(g) That in the foregoing estimate allowance is made for ordinary contingencies, but not for strikes or other occurrences beyond the control of the Sanitary District or its contractors.

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(5) That the diversion by the Sanitary District of water from Lake Michigan should be reduced on July 1, 1930, to an annual average diversion of 6,500 c. f. s., in addition to domestic pumpage.

(6) That subject to the approval of the Secretary of War upon the recommendation of the Chief of Engineers, pursuant to the applicable statute, controlling works should be constructed by the Sanitary District for the purpose of preventing reversals of the Chicago River at times of storm and the introduction of storm flow into Lake Michigan; that for this purpose the Sanitary District should immediately submit plans for such works to the Chief of Engineers of the War Department; and that such controlling works should be constructed by the Sanitary District within two years after receiving the authorization of the Secretary of War.

(7) That when such controlling works have been constructed, the diversion by the Sanitary District of water from Lake Michigan should not exceed the annual average of 5,000 c. f. s. in addition to domestic pumpage.

(8) That there should be provision in the decree for an appropriate examination of results from time to time as the work of sewage treatment progresses to the end that

there may be such further reduction of the diversion by the Sanitary District as may be found to be feasible pending the completion of the sewage treatment works.

(9) That, after the installation of controlling works as above provided, and on the completion of all the sewage treatment works above described, and in the absence of competent action by Congress in relation to navigation lawfully imposing a different requirement, the diversion by the Sanitary District of water from Lake Michigan should not exceed an annual average of 1,500 c. f. s. in addition to domestic pumpage.

(10) That by the term "diversion" in the foregoing conclusions is meant the flow diverted by the Sanitary District exclusive of the water drawn by the City of Chicago for water supply purposes and entering the Chicago River and its branches or the Calumet River or the Chicago Drainage Canal as sewage. Such diversion is determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water mains and, as so computed, it includes the run-off of the Chicago and Calumet drainage area.

(11) That provision should be made in the decree for an examination of results after the completion of the sewage treatment works so that there may be such further or other relief in respect to the diversion of water from Lake Michigan as may be found to be feasible.

RECOMMENDATIONS AS TO THE DECREE

In their proposed findings both parties include provisions with respect to the times of completion of the sewage treatment works. The defendants, however, suggest that the Court should merely find the works necessary to be installed, in order practically to dispose of the sewage of

Chicago, and that then the constituted administrative agencies of the Government, the Chief of Engineers and the Secretary of War may act. It is suggested that the Court should not enter a mandatory or coercive form of decree; that if the Court declares what works

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shall be installed and the time within which they should be completed, it must be assumed that out of respect to the Court the State of Illinois and the Sanitary District will perform what the findings conclude they should do, unless obstacles arise which make such compliance impossible; and that the Court should retain jurisdiction until the works are installed and in operation.

The Court will undoubtedly give to this suggestion the consideration which is thought to be appropriate. As its opinion, pursuant to which the order of re-reference was made, is understood to contemplate directions as to the diminishing of the diversion, these directions will properly be found in the decree. But, as such provisions will necessarily depend upon the times fixed for the completion of the sewage treatment works, and as the terms of the decree will follow the findings, as finally confirmed or modified by the Court in this respect, it would not be a matter of substance to exclude from the decree provisions as to the times of completion. Accordingly, they are included in the form of decree proposed.

It is recommended that the Court should retain jurisdiction as there are questions which it is impossible to dispose of at this time in full justice to the parties; as, for example, with respect to the extent to which the diversion of water from Lake Michigan by the Sanitary District may be reduced below 5,000 c. f. s., in addition to pumpage, after the installation of controlling works in the Chicago

River and pending the completion of the sewage treatment works, and also with respect to any further or other provisions as to the diversion which may be found to be appropriate after the sewage treatment works have been completed and the results of their operation with respect to the effluent and the condition of the navigable waters have been observed. As construction work will be conducted on a large scale for several years, and unforeseen contingencies may arise, it would also seem to be important that there should be opportunity for the parties to come before the Court at any time to obtain such further directions as the facts may warrant.

To the end that the rights of all parties may be protected, there should be some measure of supervision as the contemplated work progresses. If it is deemed to be impracticable, in view of the long period involved, to appoint a commissioner for this purpose, provision may be made in the decree for the filing at stated periods by the Sanitary District of reports as to the progress of the work, on the coming in of which either party may make application to the Court for such action as may seem to be suitable. It is suggested that the Sanitary District should file semi-annual reports with the Clerk of this Court.

On the basis of the conclusions above stated, and in accordance with the direction of the order of re-reference, the following proposed form of decree is submitted. No recommendation is made as to costs.

PROPOSED FORM OF DECREE

(After formal parts and confirmation or modification of findings):

1. That the defendant Sanitary District of Chicago complete and place in full operation the North Side Sewage

Treatment Plant and Batteries A and B of the Imhoff tanks at the West Side Sewage Treatment Plant (as outlined in the program proposed by the Sanitary District of Chicago) on or before July 1, 1930.

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2. That the defendant Sanitary District of Chicago continue the operation of the Calumet sedimentation sewage disposal plant.

3. That the defendant Sanitary District of Chicago complete and place in full operation the Calumet Sewage Treatment Plant (as outlined in the program proposed by the Sanitary District of Chicago) on or before December 31, 1933.

4. That the defendant Sanitary District of Chicago complete and place in full operation the West Side Sewage Treatment Plant (as outlined in the program proposed by the Sanitary District of Chicago) on or before December 31, 1935.

5. That the defendant Sanitary District of Chicago complete and place in full operation the Southwest Side Sewage Treatment Plant (as outlined in the program proposed by the Sanitary District of Chicago) on or before December 31, 1938.

6. That the foregoing requirements as to times of completion include allowances for ordinary contingencies but not for strikes or other occurrences beyond the control of the Sanitary District or its contractors.

7. That on and after July 1, 1930, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great

Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 6,500 c. f. s. in addition to domestic pumpage.

8. That subject to the approval of the Secretary of War upon the recommendation of the Chief of Engineers, pursuant to the applicable statute, controlling works shall be constructed by the Sanitary District of Chicago for the purpose of preventing reversals of the Chicago River at times of storm and the introduction of storm flow into Lake Michigan; that for this purpose the Sanitary District of Chicago shall forthwith submit plans for such works to the Chief of Engineers of the War Department; and that such controlling works shall be completed and placed in full operation by the Sanitary District of Chicago within two years after receiving the authorization of the Secretary of War.

9. That when such controlling works have been constructed and placed in operation, the defendants, the State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 5,000 c. f. s. in addition to domestic pumpage.

10. That after the installation of controlling works as above provided, and on the completion of all the sewage treatment works as outlined in the program proposed by the Sanitary District of Chicago, and in the absence of competent action by Congress in relation to navigation lawfully imposing a different requirement, the defendants the

State of Illinois and the Sanitary District of Chicago, their employees and agents, and all persons assuming to act under the authority of either of them, be and they hereby are enjoined from diverting

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any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 1,500 c. f. s. in addition to domestic pumpage.

11. That the provisions of this decree as to the diverting of the waters of the Great Lakes-St. Lawrence system or watershed relate to the flow diverted by the defendants exclusive of the water drawn by the City of Chicago for water supply purposes and entering the Chicago River and its branches or the Calumet River or the Chicago Drainage Canal as sewage. The amount so diverted is to be determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water mains and as so computed will include the run-off of the Chicago and Calumet drainage area.

12. That the defendant the Sanitary District of Chicago shall file with the clerk of this Court semi-annually on July first and January first of each year, beginning July first, 1930, a report to this Court adequately setting forth the progress made in the construction of the sewage treatment plants and appurtenances outlined in the program as proposed by the Sanitary District of Chicago, and also setting forth the extent and effects of the operation of the sewage treatment plants, respectively, that shall have been placed in operation, and also the average diversion of water from Lake Michigan during the period from the entry of this decree down to the date of such report.

13. That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above entitled suits, complainants or defendants, may apply to the Court for such action or relief, either with respect to the time to be allowed for the construction, or the progress of construction, or the methods of operation, of any of said sewage treatment plants, or with respect to the diversion of water from Lake Michigan, as may be deemed to be appropriate.

14. That any of the parties hereto, complainants or defendants, may, irrespective of the filing of the above described reports, apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

Respectfully submitted,

CHARLES E. HUGHES,
Special Master.